**UNITED STATES OF AMERICA**
**NATIONAL LABOR RELATIONS BOARD**

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**NABET-CWA, Local 51,**

**and** **Case Nos.** 19-CB-244528
19-CB-247119

**Jeremy Brown.**

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## CHARGING PARTY'S RESPONSE TO RESPONDENT'S EXCEPTIONS

## INTRODUCTION

The Respondent Union, NABET-CWA, Local 51 ("Union") and a fictitious entity called the "National Right to Work for Better Conditions Committee" ("Conditions Committee") have filed separate exceptions to the ALJ decision.

The fictitious "Conditions Committee's" exceptions, challenging the ALJ's denial of intervention, is frivolous and is a waste of the Board's litigation resources. This fictitious entity and its counsel (Mr. Rosenfeld) have no need to intervene because Mr. Rosenfeld is already representing the Union and he testified in the hearing. The ALJ's denial of intervention should be upheld.

In its exceptions, the Union argues that it had no duty to respond to Charging Party Jeremy Brown's ("Brown") unintentionally misdirected *Beck* objection letter (Union Exception 1), and that even if it did, it should not be required to accept Brown's objection as perfected two weeks after he first sent it. (Union Exceptions 2 & 3). The problem for the Union is *California Saw & Knife Works* requires this outcome: "a district or local lodge that receives a misdirected dues-objection request must, in order to satisfy its duty of fair representation under *Beck*, timely inform the would be objector of the error and of the proper procedures for securing the desired objector status." 320 NLRB 224, 250 (1995). Additionally, when a Union fails to respond in a timely

manner to a misdirected *Beck* objection the standard remedy is to require the union to treat the employee as a perfected *Beck* objector. In *California Saw* the Board found "that 2 weeks should be added to the date of the employees' objection requests—1 week for the Local's notification of the error to reach the employee and another week for the request to reach the IAM—and thus that the objectors should have been recognized as perfected 2 weeks after they sought objector status." 320 NLRB at 248. Obviously, a perfected objection would require the Union to provide Brown with his procedural rights under *Beck*. The Union does not directly challenge *California Saw* or seek to overturn it. The Board should continue to apply *California Saw* and uphold the ALJ's decision in total on this point.

## I. The ALJ was correct to deny the motion to intervene filed by the "Conditions Committee."

As an initial matter, the ALJ properly denied the intervention by the fictitious "Conditions Committee." The desire of this fictitious entity and its counsel to intervene for the purpose of proving that Mr. Brown's Counsel's employer, the National Right to Work Legal Defense Foundation (which is not a party to this litigation), is part of "criminal conspiracies and employer sponsored," (Conditions Committee Exceptions, 2). is both irrelevant and absurd, and a complete waste of this Board's scarce adjudicatory resources.

These frivolous exceptions should be denied for three reasons. First, the "National Right to Work for Better Conditions Committee" (to the extent it is even an actual organization)[1] has no interest in the questions actually presented in this case, which are: (1) whether the Respondent violated the Act by refusing to respond to Brown's misdirected *Beck* objection; and (2) whether the Respondent violated the Act when its counsel sent Brown two overbroad and threatening

[1] It is not apparent this organization actually exists outside of the mind of Respondent's counsel. Brown will assume it does, for the sake of argument.

evidence preservation letters in response to his charges. Second, even if the "Conditions Committee" did have an interest in this case (it does not), its interests are amply represented by the Respondent, who is represented by the *same counsel* attempting to intervene. Finally, the tangential and ideological argument the "Conditions Committee" purports to want to make is frivolous, as the outcome of this proceeding is not determined in any way by their nonsensical allegations against a non-party. The "Conditions Committee's" ideological crusade against another organization is devoid of merit and completely irrelevant in this proceeding.

## II. The ALJ was correct in finding that the Union violated the Act when it ignored Brown's letters.

The Union's defense of its actions can be boiled down to a single faulty contention: it may completely ignore an employee's letter if the letter is directed to the wrong union office. (Union Exception Br. 5-8). Thankfully, this is not the law. In *California Saw & Knife Works*, 320 NLRB 224, 252 (1995), the Board held when a union receives a misdirected objection letter under *CWA v. Beck*, 487 U.S. 735 (1988), it must timely notify the would-be objector of the error and provide the correct information. This is the only result that is consistent with the Act and the Union's duties as an exclusive representative. If the Union was correct, it would have no obligation to ever tell a mistaken employee he or she misdirected a *Beck* objection letter. Unions would be allowed to let employees, who are merely trying to exercise their rights under the Act, languish for months because they made a simple mistake. In reality, the Union must respond to a mistaken employee and the burden is minimal—all the Union president had to do was to respond to Brown's emails with a proper address so Brown could send his *Beck* objection there.

As the exclusive representative, a union owes all employees a fiduciary duty of fair representation. *Vaca v. Sipes*, 386 U.S. 171 (1967); *Teamsters Local No. 391 v. Terry*, 494 U.S. 558 (1990). This fiduciary duty gives employees "the right to be free from unfair or irrelevant or

invidious treatment . . . in matters affecting their employment." *Miranda Fuel Co.*, 140 NLRB 181 (1962). Subject to this duty, the union is "to use reasonable efforts to give [its] principal information which is relevant to affairs entrusted to [it] and which, as the agent has notice, the principal would desire to have." *Int'l Union of Elec., Radio & Mach. Workers*, 307 F.2d 679, 683 (D.C. Cir. 1962) (citation omitted). A union's duty of fair representation includes the obligation to provide employees with requested information pertaining to matters affecting their employment. *See Branch 529, Nat'l Ass'n of Letter Carriers*, 319 NLRB 879, 881 (1995) (union breached its duty of fair representation by refusing to provide employee copies of her grievance forms).

In *California Saw*, the Board concluded this duty includes telling an employee if he or she incorrectly mailed a *Beck* objection letter. There, the Board considered consolidated claims that various local unions had violated the Act by failing to properly respond to misdirected *Beck* objection letters. Specifically, a number of employees had misdirected their *Beck* objection letters to local IAM offices, rather than the national office. 320 NLRB at 248, 252.

In one instance, an IAM local responded to the misdirected *Beck* objections by referring the employees to an internal union policy printed in a past issue of the IAM's "Machinist" magazine, which had previously been distributed to them. *Id.* at 252 n.118. The Board found this response inadequate and unlawful, stating that "a district or local lodge that receives a misdirected dues-objection request must timely notify the would be objector of the error and give him or her the correct information about where to send their objection." *Id.* at 252. The letters from the local union directing employees to a back issue of the Machinist magazine were insufficient. The Board noted: "[w]e are not persuaded that the response letters referring to the December issue of the Machinist was sufficient to satisfy that obligation, notwithstanding that the letters were sent within 1 month after the magazine's issuance. The duty of fair representation does not permit a union to

set up a scavenger hunt for employee who make it known that they wish to become dues objectors to obtain the procedures." *Id.*

A different IAM local "did not immediately notify the would-be objectors that their requests had been misdirected." *Id.* at 248. Instead it waited several weeks until it sent a copy of the policy to some of the would-be objectors. *Id.* The Board found this violated the Act because the local was obligated to "timely notify the employees that their objections had been misdirected and specify the correct address to which their objections should be sent." *Id.*

Here, the Union weakly claims *California Saw* gives it *carte blanche* to ignore misdirected letters if it has already provided its *Beck* procedures at some point in the past. (Union Exceptions Br. 6-7). This is a misreading of *California Saw*. There, the Board made clear that the Union has a duty to respond to misdirected letters: "Once a would be objector is notified in a timely manner that his objection has been *misdirected and informed of the proper procedure to perfect his objection*, the employee thereafter bears the responsibility to follow the proper procedure." *California Saw*, 320 NLRB at 249 (emphasis added). Consequently, the Board found no violation with respect to those employees who had misdirected a *Beck* objection and *thereafter* "timely received" copies of the union's *Beck* policy. That of course did not happen here because the Union *never responded to Brown's emails.*

Here, Brown sent two objection letters via email to the Local Union president. (GC Ex. 5, 12).[2] Under *California Saw*, the Union was obligated to tell him that he had misdirected his objection letter and to inform him of the proper address to perfect his objection, or at the very least resend

[2] The Union spills ink claiming that the Union President could not understand Brown's April 4 letter as a proper *Beck* objection. (Union Exceptions Br. 6). The ALJ, however, found Brown's letter was a proper *Beck* objection (ALJD at 6) and the Union has not excepted to this finding. The Union has waived any argument that Brown's letter was not a proper and understandable objection.

him the policy in a timely manner. Such as response would have posed no burden whatsoever on the Union. But to this day, the Union has never responded to Brown to inform him of the proper address to perfect his objection. Instead, several months *after* he filed his ULP charge, the Union's counsel informed Brown's counsel that his request had been misdirected, along with a claim that he had previously been informed of the Union's *Beck* procedures. (Union Ex. 6). That communication is inadequate under *California Saw*, where the Board specifically told unions what they needed to do to fulfill their fiduciary obligations. Here, the Union was obligated to inform Brown, promptly and directly of the proper address to send his objection letter.[3]

Ignoring Brown's multiple emails was wholly inconsistent with the Union's duties under the Act. *Teamsters Local 385*, 366 NLRB No. 96, slip op. at 1-2 (a union violates the Act by ignoring, or delaying responses to, employees' resignations and checkoff revocations); *Local 600, UAW*, 368 NLRB No. 54 (Aug. 28, 2019) (union violated the Act through its willful refusal to respond to a request to resign membership and revoke a dues checkoff).

Here, the record is replete with examples of the Union ignoring its duties to Brown. The Union did not notify Brown for three years about his obligation to pay dues, from 2016 to 2019. Because

3 In addition to being inadequate, the Union counsel's letter is also untimely—it was sent eight months after Brown's April 4 objection, six months after Brown's June 4 objection, and several months after Brown filed a ULP charge. The Board has held delay in effectuating an employee's Section 7 rights violates Section 8(b)(1)(A). *Teamsters Local 385 (Walt Disney Parks & Resorts)*, 366 NLRB No. 96 (June 20, 2018), slip op. at 2 (a union violates the Act by ignoring or delaying responses to employees' checkoff revocations); *Affiliated Food Stores, Inc.*, 303 NLRB 40, 40 n.2, 45-46 (1991) (finding a union's ten-week delay in honoring a checkoff revocation a violation of the Act). Such a long delay in even recognizing that the request may be misdirected (and occurring only after a charge was filed) shows that the Union's non-response was willful, rather than inadvertent. *Radio Officers' Union v. NLRB*, 347 U.S. 17, 45 (1954) (finding violation of the Act where violation of Section 7 rights was "such a foreseeable result."). This is consistent with the Board's holding in *California Saw* that any response to a misdirected *Beck* objection letter must be "timely." 320 NLRB at 252.

of the Union's apparently sloppy bookkeeping, it failed to notify Brown in a timely manner of his periodic dues requirements and then belatedly demanded a significant arrearage payment of nearly $10,000. (GC Ex. 4). Brown responded to the Union's April 1 letter demanding he pay nearly $10,000 by sending a *Beck* letter seeking to pay only the amount that he was legally required to pay. (GC Ex. 5, 12). It is not unreasonable for an employee to respond directly to the very same entity that made the demand for payment of $10,000. Even after multiple emails from Brown seeking clarification about the amounts owed and his *Beck* rights, the Union stayed silent.

The Union claims its inclusion of its *Beck* objection procedures at the end of its demand letters absolves its failures to acknowledge Brown's inadvertent emails and letters. A union's fiduciary obligations do not end because employees mistakenly send objection letters to the wrong address. A fiduciary is required to at least respond to the mistaken employee. *See generally Local 441, IUE (Phelps Dodge)*, 281 NLRB 1008, 1012 (1986) (ambiguous resignation letter cannot be ignored or simply denied). The Board put it best in *UAW Local 1384 (Ex-Cell-O Corp.)*, 227 NLRB 1045, 1048-49 (1977):

> considerations of elemental fairness would seem to require respondent, after receiving the resignations, to take some actions to give appropriate advice to the employees so that they would have an opportunity to comply with respondents' specific requirements . . . . Thus, it could well be argued that respondent's conduct in this regard constituted a breach of its fiduciary duty to deal fairly with employees and that therefore respondent is now estopped from asserting that the resignations are invalid.

In short, the Union's "defense," that Brown's letter is invalid and could be ignored because it was misdirected, is without merit. The Union could have fulfilled its obligation with a two-sentence email correcting Brown's mistake. Instead, it chose to ignore him.

## III. Any remedy requires Brown to be treated as a Beck objector *nunc pro tunc* to when he first objected.

The ALJ ordered a remedy consistent with *California Saw* and *Rochester Mfg. Co*., 323 NLRB 260, 263 (1997) ("we shall order the Respondent Union, in the compliance stage of the proceeding, to process their objections, nunc pro tunc, as it would otherwise have done, in accordance with the principles of *California Saw & Knife*."). In *California Saw* the Board found "that 2 weeks should be added to the date of the employees' objection requests—1 week for the Local's notification of the error to reach the employee and another week for the request to reach the IAM—and thus that the objectors should have been recognized as perfected 2 weeks after they sought objector status." 320 NLRB at 248. This is obviously the correct remedy because it puts a charging party in the same position had a union not violated the Act. Here, had the Union informed Brown he had misdirected his *Beck* objection, he could have properly perfected his *Beck* objection by April 19, 2019. Instead, the Union ignored his request.

Thus, the ALJ ordered the Union to treat Brown as a perfected *Beck* objector, to refund him any amount he paid above the reduced *Beck* fee amount, and to provide *Brown* with the procedural protections he requested in his letter and those that have been developed to implement *Beck,* including a good faith determination of the amount of reduced dues he must pay, independently verified by an auditor, and its challenge procedure. The Union excepts to the ALJ's proposed order requiring it to provide *Brown* with his procedural *Beck* rights and to treat him as a perfected *Beck* objector.

The Union first argues the other remedies ordered by the ALJ "suffice to address [its] omission." (Union Exceptions Br. 9). As described above, this is incorrect. The remedy must place Brown in the same position he would be had the Union properly informed him that his objection

letter had been misdirected. The only way to do this is to treat him as having his objection perfected two weeks after his initial *Beck* objection letter.

The Union also claims the remedy is an "unreasonable administrative burden" in contravention of *California Saw*. (Union Exceptions Br. 9). The problem for the Union is two-fold. First, it ignores this is what is required by *California Saw*, 320 NLRB at 248. Second, it not an unreasonable administrative burden to require the Union to treat Brown as a *Beck* objector and provide him with its detailed and independently verified apportionment of the expenditures for representational and non-representational activities, and its challenge procedures. The Union does not have to change its procedures for how it normally administers *Beck* objections, but it does have to place Brown in the same place he would have been had it never violated the Act.

## CONCLUSION

The Union's Exceptions, and the frivolous exceptions of the fictitious "Conditions Committee," should be denied.

Respectfully Submitted,

February 18, 2021

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## CERTIFICATE OF SERVICE

I hereby certify that February 18, 2021, a true and correct copy of the forgoing document was filed electronically using the NLRB e-filing system, and copies were sent to the following parties via e-mail:

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